JAN 15 1998

No. 97-1014

In The

SUPREME COURT OF THE UNITED STATES

October Term 1997

WALTON HALLECK DONNELL,
Petitioner,

v.

THE SUPREME COURT OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

BETTY D. MONTGOMERY
Attorney General of Ohio

JEFFREY S. SUTTON
State Solicitor
Counsel of Record
SIMON B. KARAS
Deputy Chief Counsel
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215-3428
(614) 466-8980

JONATHAN E. COUGHLAN
Disciplinary Counsel
LORI J. BROWN
Assistant Disciplinary Counsel
175 South Third Street, Suite 280
Columbus, Ohio 43215
(614) 461-0256

COUNSEL FOR RESPONDENT

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STATEMENT OF THE CASE

Petitioner, Walton Halleck Donnell, an attorney licensed to practice law in the State of Ohio, was suspended from the practice of law for six months by the Supreme Court of Ohio on October 1, 1997. *Disciplinary Counsel v. Donnell*, 79 Ohio St.3d 501 (1997). Petitioner's application for writ of certiorari seeks review of that decision.

The Disciplinary Counsel filed numerous disciplinary charges against the Petitioner arising from his argumentative and disrespectful conduct toward his ex wife, witnesses, and the trial court. *Pet. App. 2-3.* The Board of Commissioners of Grievances and Discipline recommended that Petitioner be suspended for one year, with the entire year stayed and that he be placed on probation for that year. *Pet. App. 3.*

Upon review, the Ohio Supreme Court suspended Petitioner from the practice of law for six months. *Pet. App. 4.* The Supreme Court of Ohio determined that Petitioner's conduct exceeded the bounds of zealous advocacy, and concluded, "as the Board aptly noted, 'This case is yet another textbook example of why an attorney should not represent himself.'" *79 Ohio St.3d at 503, Pet. App. 3.*

During the disciplinary hearing, Petitioner subpoenaed three appellate judges for the purpose of calling them as expert witnesses. The Board, sua sponte, quashed the subpoenas on the ground that the subpoenaed judges had no personal knowledge of the allegations against Petitioner. *See Pet. 3-6.* Previously, the Board had granted a motion to quash subpoenas for Ohio Supreme Court Chief Justice Moyer and other officials of the Ohio Supreme Court. Appendix. Petitioner objected that he had not received a copy of the order prior to the hearing. *Pet. 3.* The subpoenas were quashed "without prejudice to [Petitioner's] right to apply at the hearing on April 16, 1996, for

issuance of such subpoenas upon a proper showing." Petitioner never renewed his request for the subpoenas.

REASONS WHY THE WRIT SHOULD BE DENIED

This case does not present any issues that warrant review by this Court. No federal question of importance has been presented and no lower court conflict has been alleged.

While attempting to frame his claims in terms of due process, Petitioner merely seeks appellate review of his six month suspension.

In an undeveloped argument, Petitioner attempts to convince the Court that it should decide whether the Fourteenth Amendment to the United States Constitution protects "two separate persons where an attorney represents himself." In essence, he argues that he cannot be guilty of disciplinary violations, since his actions were taken as a litigant, not as an attorney.

The Ohio Supreme Court categorically rejected this contention. "[E]ven in a situation where an attorney represents himself he must follow the Code of Professional Responsibility and show proper respect for the Court." *79 Ohio St.3d 503, Pet. App. p. 4.* That is a matter of state, not federal, law.

Petitioner is admitted to the practice of law in the State of Ohio and, as such, is subject to the Code of Professional Responsibility. Petitioner chose to represent himself. Whether he was representing himself or representing another client, Petitioner was subject to discipline for violating the Code of Professional Responsibility. By choosing to act as his own

attorney, Petitioner did not somehow transform himself into two different people with two different sets of constitutional rights.

Similarly, Petitioner seeks review of state law rulings on the admissibility of evidence. Petitioner's subpoenas were quashed because Petitioner had not made a "proper showing" that any of the testimony which Petitioner allegedly planned to present was, in any way, admissible or relevant. The hearing panel expressly found that the subpoenaed appellate judges had absolutely no personal knowledge of the allegations to be presented against Petitioner. In addition, Petitioner never established his entitlement to the testimony of the subpoenaed Ohio Supreme Court officials, nor renewed his request for their testimony. Ultimately, whether those rulings were correct is a state, not federal, issue.

In Re Ruffalo, 390 U.S. 54 (1968) is not to the contrary. While *Ruffalo* stated that an attorney is entitled to procedural due process in the resolution of disciplinary charges, petitioner was accorded notice, a hearing, and an opportunity to be heard before a competent tribunal. The facts of this case establish that Petitioner received all the process to which he was due.

CONCLUSION

For the above reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

JEFFREY S. SUTTON
State Solicitor
Counsel of Record
SIMON B. KARAS
Deputy Chief Counsel
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215-3428
(614) 466-8980

JONATHAN E. COUGHLAN
Disciplinary Counsel
LORI J. BROWN
Assistant Disciplinary Counsel
175 South Third Street, Suite 280
Columbus, Ohio 43215
(614) 461-0256

COUNSEL FOR RESPONDENT

January 15, 1998

FILED APRIL 15, 1996

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO

In re: DISCIPLINARY COUNSEL,	:	
	:	
RELATOR,	:	Case No. 95-39
	:	
v.	:	
	:	
WALTON HALLECK DONNELL,	:	
	:	
RESPONDENT.	:	

ORDER

On application of Relator, and for good cause shown, Relator's Motion to Quash, filed April 12, 1996, is hereby granted and it is

ORDERED that Respondent's subpoenas addressed to Chief Justice Moyer, to Richard A. Dove, and to Geoffrey Stern be, and they hereby are, quashed, without prejudice to Respondent's right to apply at the hearing on April 19, 1996 for issuance of such subpoenas upon a proper showing.

/s/ David S. Cupps
David S. Cupps, for the Chair